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ATTORNEYS FOR APPELLEE:

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ALFREDO GONZALEZ,
Appellant-Defendant,

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Appellee-Plaintiff.

The Honorable Linda E. Brown, Judge
Cause No. 49F10-0603-CM-60772

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Alfredo Gonzalez was convicted of battery¹ as a Class A misdemeanor after a jury trial. He appeals his conviction raising the following restated issue: whether sufficient evidence was presented to support his conviction for battery.

We reverse and remand with instructions.

FACTS AND PROCEDURAL HISTORY

On March 28, 2006, Lori Shoemaker, who had her four-year-old son in the van with her, pulled onto West 16th Street in Indianapolis. West 16th Street has three lanes going in each direction. Shoemaker pulled into the closest lane, and Gonzalez was driving in the middle lane. Wanting to get into the far left lane, Shoemaker waited for Gonzalez to pass, then she went around him and came close to hitting his vehicle. Gonzalez started gesturing and waving his arms at Shoemaker and then swerved his vehicle at her van, causing her to cross the yellow line. Shoemaker decided to write down Gonzalez's license plate number in order to report his actions to the police. After writing down the number, she turned north onto Lyndhurst, and Gonzalez turned south. However, when Shoemaker looked into her rearview mirror, she saw Gonzalez behind her, following her so closely that she could not see his headlights. Shoemaker began turning down side streets, and Gonzalez continued to follow her. She then became scared and drove to the nearest police station, which was the Speedway Police Department.

At the police station, Shoemaker exited her van, and Gonzalez followed her and blocked her from entering the station. He yelled at her, spat in her face, grabbed her arm, and told her she was not going anywhere. *Tr.* at 76. Shoemaker flung her arm back, went over

¹ See IC 35-42-2-1.

some bushes, and was able to enter the police station. Officers observed Shoemaker crying and noticed she looked terrified. The officers also observed that Gonzalez appeared to be very upset and agitated.

The State charged Gonzalez with battery as a Class A misdemeanor. A jury trial was held on July 10, 2007. At the trial, when asked what it felt like when Gonzalez grabbed her arm, Shoemaker testified, “I felt pressure. I felt a pinch on my arm, like he was trying to restrain me. Trying to tell me I wasn’t going to go anywhere, and he grabbed a hold of my arm.” *Id.* When asked how hard he grabbed her, she stated, “Hard enough to make me feel uncomfortable, it was a pinch. I felt pressure.” *Id.* at 77. The jury found Gonzalez guilty of battery as a Class A misdemeanor. He now appeals.

DISCUSSION AND DECISION

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at 523.

Gonzalez argues that the evidence presented at trial did not support his conviction for battery as a Class A misdemeanor. He specifically contends that no evidence was presented that Shoemaker suffered pain as a result of him grabbing her arm. In order to convict Gonzalez of battery as a Class A misdemeanor, the State was required to prove that he

knowingly or intentionally touched Shoemaker in a rude, insolent, or angry manner, and that the touching resulted in bodily injury to her. IC 35-42-2-1(a)(1)(A). “Bodily injury” is defined as “any impairment of physical condition, including physical pain.” IC 35-41-1-4.

Here, when asked to describe what it felt like when Gonzalez grabbed her arm, Shoemaker replied, “I felt pressure. I felt a pinch on my arm, like he was trying to restrain me.” *Tr.* at 76. When further asked how hard he grabbed her, she replied, “Hard enough to make me feel uncomfortable, it was a pinch. I felt pressure.” *Id.* at 77. We conclude that the State failed to elicit evidence that Shoemaker suffered pain as a result of being grabbed by Gonzalez. After Shoemaker’s testimony, the State failed to follow up the answers or to put on any evidence of pain experienced by Shoemaker. Pressure and a pinch may amount to pain or may not amount to pain. Here, the trier of fact could only speculate as to whether they amounted to pain. Such speculation is not a reasonable inference drawn from the evidence presented and does not constitute proof beyond a reasonable doubt that the touching by Gonzalez resulted in bodily injury to Shoemaker in the form of pain. We therefore vacate Gonzalez’s conviction for battery as a Class A misdemeanor and remand with instructions to enter conviction for battery as a Class B misdemeanor.

Reversed and remanded with instructions.

RILEY, J., concurs.

MAY, J., concurs in result.